

SENATE RECORD VOTE ANALYSIS

105th Congress
1st Session

Vote No. 50

April 24, 1997, 9:18 pm
Page S-3636 Temp. Record

CHEMICAL WEAPONS CONVENTION/Sharing Chemical Information

SUBJECT: Resolution of ratification for the Convention on the Prohibition of Development, Production, Stockpiling, and Use of Chemical Weapons and on their Destruction (Treaty Doc. 103-21) . . . S. Res. 75. Biden amendment No. 51.

ACTION: AMENDMENT AGREED TO, 66-34

SYNOPSIS: S. Res. 75, a resolution of ratification for the Convention on the Prohibition of Development, Production, Stockpiling, and Use of Chemical Weapons and on their Destruction, will give the Senate's advice and consent to the Chemical Weapons Convention (CWC). (Resolutions of ratification ordinarily are not assigned numbers; in this case, by unanimous consent, the Senate considered S. Res. 75 as a substitute for the unnumbered resolution submitted by the Executive Clerk. Also by unanimous consent, the Senate did not consider amendments to the convention, it agreed by voice vote to the first 28 of 33 conditions, declarations, statements, and understandings that were in S. Res. 75, and it agreed that the only other actions in order would be motions to strike the remaining 5 conditions, declarations, statements, and understandings; see vote Nos. 46-50.)

The Biden amendment would strike condition number 32, which will require the President to certify to Congress, before depositing the instrument of ratification, that the States Parties have made an agreement to amend the CWC: by striking Article X; and by striking provisions from Article XI that state or imply disapproval of trade restrictions in chemical activities. Additionally, the President will be required to certify that no provision has been added to the Convention or any of its annexes, and no official statement has been made, that sets forth or implies a right or obligation of States Parties to share or facilitate the exchange among themselves of chemical weapons defense technology, chemicals, equipment, or scientific and technical information. (Article X concerns defenses against chemical weapons. It defines such defenses as including the following items: detection equipment; alarm systems; protective equipment; decontamination equipment; decontaminants; medical antidotes and treatments; and advice on any of these measures. It states that the CWC will not impede States Parties from developing chemical weapons defenses. It states that "Each State Party undertakes to facilitate, and shall have the right to participate in, the fullest possible exchange of equipment,

(See other side)

YEAS (66)			NAYS (34)		NOT VOTING (0)	
Republicans (21 or 38%)	Democrats (45 or 100%)		Republicans (34 or 62%)	Democrats (0 or 0%)	Republicans (0)	Democrats (0)
Chafee	Akaka	Johnson	Abraham	Hutchinson		
Coats	Baucus	Kennedy	Allard	Hutchison		
Cochran	Biden	Kerrey	Ashcroft	Inhofe		
Collins	Bingaman	Kerry	Bennett	Kempthorne		
D'Amato	Boxer	Kohl	Bond	Kyl		
DeWine	Breaux	Landrieu	Brownback	Lott		
Domenici	Bryan	Lautenberg	Burns	Mack		
Frist	Bumpers	Leahy	Campbell	McConnell		
Gorton	Byrd	Levin	Coverdell	Murkowski		
Hagel	Cleland	Lieberman	Craig	Nickles		
Hatch	Conrad	Mikulski	Enzi	Santorum		
Jeffords	Daschle	Moseley-Braun	Faircloth	Sessions		
Lugar	Dodd	Moynihan	Gramm	Shelby		
McCain	Dorgan	Murray	Grams	Smith, Bob		
Roberts	Durbin	Reed	Grassley	Thomas		
Roth	Feingold	Reid	Gregg	Thompson		
Smith, Gordon	Feinstein	Robb	Helms	Thurmond		
Snowe	Ford	Rockefeller				
Specter	Glenn	Sarbanes				
Stevens	Graham	Torricelli				
Warner	Harkin	Wellstone				
	Hollings	Wyden				
	Inouye					

EXPLANATION OF ABSENCE:

1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:

AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

material and scientific and technological information concerning means of protection against chemical weapons." Other provisions of Article X set forth the right of each State Party to request chemical weapons defense assistance when threatened or attacked with chemical weapons, and obligate each State Party to declare the type of chemical weapons defense assistance it will give (each State Party must give financial or other assistance). Article XI, in part, mandates that States Parties shall "Undertake to facilitate, and have the right to participate in, the fullest possible exchange of chemicals, equipment, and scientific and technical information relating to the development and application of chemistry for purposes not prohibited under this Convention;" and shall "Not maintain among themselves any restrictions, including those in any international agreements, incompatible with the obligations undertaken under this Convention, which would restrict or impede trade and the development and promotion of scientific and technological knowledge in the field of chemistry for industrial, agricultural, research, medical, pharmaceutical, or other peaceful purposes".)

Those favoring the amendment contended:

Condition 32 addresses a perceived problem that, to the extent it really exists, is fixed by other conditions in the resolution and by assurances that have been given by the Clinton Administration. The perceived problem is with Articles X and XI, which our colleagues fear will be interpreted as requiring the United States to share with extremely dangerous regimes dual-use chemicals (chemicals which have peaceful uses but which also can be used in weaponry), dual-use technologies, and information on chemical weapons defenses. (The danger in giving information on chemical weapons defenses is that an aggressive country may then use that information to figure out how to overcome those defenses). Looking at some of the language of those articles in isolation, it is easy to see how one might interpret them to mean that the United States will have to do all of the above. However, it is not appropriate to interpret that language in isolation; it must be taken in context with the rest of the language of those articles, and with the language of the CWC as a whole.

When one takes that approach, it is clearly not reasonable to expect that the United States or any other country is going to have to relax chemical and chemical technology restrictions on countries like Iran just because they have joined the CWC. We have numerous reasons for making this statement. First and foremost, we note that Article I of the convention obligates States Parties not to acquire chemical weapons or to assist another state in so doing. All other articles are subordinate to Article I; therefore, a State Party by the terms of the CWC will be forbidden to transfer any information, chemicals, or technology to a third country if it believes that country will misuse such transfers in a chemical weapons program. The interpretation which our colleagues fear will be made is not allowed by the CWC. Second, we note that we have precedent on our side. After the Nuclear Non-Proliferation Treaty (NPT) was signed, countries with nuclear technology formed the nuclear suppliers group in an effort to curtail the spread of nuclear technology to dangerous regimes. The NPT contains language similar to the language in Articles X and XI, but that fact did not stop NPT members who were part of the nuclear suppliers group from denying nuclear technology to other NPT members. Based on this experience, we do not think that any of the countries of the Australia Group (the Australia Group imposes chemical trade restrictions on dangerous countries) will relax any of their export controls. Third, we note that a condition of this resolution of ratification, condition 7, explicitly requires the President to certify that the United States and every other member of the Australia Group have gone on record as saying that the CWC does not require the weakening of export controls. In fact, we note that those assurances from other members have already been given. Fourth, and finally, President Clinton today has given the Majority Leader a letter in which he promises that he will be prepared to withdraw from the convention if it destroys the effectiveness of the Australia Group.

Despite all these facts, our colleagues still believe that Articles X and XI will cause chemical weapons proliferation, so they have put condition number 32 into the resolution of ratification. That condition will not allow the United States to deposit its instrument of ratification unless Article X is stripped from the CWC and Article XI is modified. That condition is impossible to meet. More than 160 countries have already signed the CWC and more than 70 have ratified it. We cannot at this point ask them to renegotiate--it is a practical impossibility. This convention has been more than a decade in a making; if the United States, which is the country that pushed for its adoption all along, demands a rewrite at the last minute, it will not get it. The rest of the world will just walk away, and all of the CWC's benefits will be lost. Further, the United States credibility will be greatly damaged, and it will have a much harder time in any future efforts it undertakes to get the world to block dangerous countries from developing chemical weapons capabilities.

Our colleagues are right to be concerned about proliferation. Condition number 32, perversely, will greatly increase the danger of chemical weapons proliferation. Therefore, we strongly support the Biden amendment to strike it from the resolution.

Those opposing the amendment contended:

Our colleagues honestly believe that the assurances they are giving us do not have an expiration date. Unfortunately, they are almost certainly wrong. Additionally, even if the United States holds to its position, our colleagues are ignoring that it will find itself in sharp disagreement with many of the other members of the CWC.

Articles X and XI were specifically added as inducements to get countries to join the CWC. In return for not developing chemical

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weapons capabilities, countries were promised access to chemicals and chemical technologies for peaceful purposes. These articles were deliberately modeled after the "Atoms for Peace" program which had earlier been used to get countries to join the NPT. We now know that a few of those countries have misused the nuclear abilities they gained from that program to develop nuclear weapons. Our fear and expectation is that countries will now misuse the CWC in the same way to gain chemicals and technology for weapons instead of for peaceful purposes.

Our colleagues have four reasons why they say Articles X and XI will not lead to greater proliferation. First, they say that the general prohibitions of Article I will trump the specific requirements of Articles X and XI. This argument is just plain wrong. Those of us who are lawyers know that in law the specific always governs the general. Articles X and XI serve to define Article I, not the other way around. Second, they say that they have precedent on their side, and point to the NPT. Interestingly, we point to that same treaty to show the danger of the CWC. Countries like Iraq were given nuclear technology under the color of the NPT for supposedly peaceful purposes, and they then used it for nuclear weapons programs. Third, our colleagues tell us that the CWC in no way requires the United States or any other member of the Australia Group to weaken their chemical export controls. What they do not tell us is that they are making a 180-degree about face with this statement. They do not mention that the Administration testified to the Senate that, "Australia Group members in August 1992 committed to review their export control measures with a view of removing them for CWC States Parties in full compliance with their obligations under the convention." Further, after the signing of the CWC, the Australia Group itself issued a formal statement that said it was reviewing its restrictions "with the aim of removing such measures for the benefit of States Parties to the convention acting in full compliance with the obligations under the convention." Last year President Clinton tried to get the Senate to approve the CWC without attaching any conditions. When it became clear that the convention did not have enough votes for ratification, in large part due to concerns that Australia Group controls would be removed, he asked that the convention's consideration be delayed. This year, the President was willing to negotiate. First, he suggested that the United States would maintain trade restrictions despite Articles X and XI. We objected that this decision would not affect other countries, and he then committed to getting other Australia Group countries to maintain their restrictions. These were good suggestions, though we note that it is a bit unseemly for the United States to join a treaty and at the same time announce that it intends to violate it and to get other countries also to violate it. Still, these articles have no place in the convention and should be removed. The final argument our colleagues have made is that we should not fear that Articles X and XI will lead to proliferation because the President has promised the United States will withdraw from the convention if they do. In response, we note first that withdrawing will not accomplish anything. We note second that the United States rarely has the courage to make a certification, no matter how true, that may embarrass another nation. Thus, it recently certified that Mexico is "fully complying" with anti-narcotics efforts, that Russia is in compliance with the Biological Weapons Convention, the Bilateral Destruction Agreement, and the Wyoming Memorandum of Understanding, and that China has not violated the Export-Import Ban Act with respect to its chemical weapons transfers to Iran. In each case these certifications are false, but they were made anyway. We note third that President Clinton will not even be required to make any certification for 2 or 3 years. Finally, we note that the letter deals mainly with United States' actions, when we are mostly concerned about other countries loosening export controls.

We are very pleased that the United States and most of the other countries of the world with advanced chemical technologies have changed how they "interpret" Articles X and XI. Originally, they universally understood those articles to mean that they would have to drop their export restrictions on countries that joined the CWC. Now they say that they do not have to and will not. Frankly, we believe that this interpretation is in violation of the CWC, and we will not be surprised if most of the CWC States Parties vote accordingly. Even if they do not, countries like China will undoubtedly interpret these articles correctly, and will use them as an excuse for transferring chemicals and technology to dangerous regimes. The only possible way that the United States can fix this problem is by confronting it directly. It must demand amendments to the CWC. Condition number 32 takes that direct approach, and thus should not be stricken.